

Decision No. 26607.

3509

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation, )

Complainant. (

vs. )

GEORGE MULLINS, doing business under the ( Case No. 3509.

fictitious name and style of MULLINS TRUCK )

LINE, FIRST DOE, SECOND DOE, THIRD DOE, )

FOURTH DOE, FIFTH DOE, FIRST DOE CORPORATION, (

SECOND DOE CORPORATION, THIRD DOE CORPORATION, (

FOURTH DOE CORPORATION, FIFTH DOE CORPORATION, )

Defendants.

-----

R. L. Vaughan and Scott Elder,  
for Complainant,

Harry A. Encell, for Defendants,

BY THE COMMISSION:

O P I N I O N

This complaint for illegal operations as a common carrier came on for hearing before Examiner Johnson at Sacramento and Redding, the two terminals of defendants' operations.

Considerable testimony was taken in both cities and at the termination of the testimony the matter was submitted on briefs which discussed the law and the facts of the case at length.

The only controversy raised by the evidence is the issue of common carriage. The witnesses who testified at Sacramento were the representatives of wholesale houses who did not pay the transportation charges and knew of no contracts covering the shipments. The witnesses heard at Redding were fairly representative of the 28 retailers who admittedly had

contracts for transportation with George Mullins. In addition to the 28 contract holders that defendant claimed established his status as a contract carrier, there were other shippers who might be called occasional users of the defendant's transportation service and about whom there was some dispute as to their possessing contracts of transportation. The form of contract used by Mr. Mullins was very brief and simply to this effect: (1) Mullins agrees to haul from any consignor in Sacramento to the party of the second part in Redding merchandise at a certain rate per hundred pounds. (2) The second party agrees to deliver all merchandise purchased by him to Mullins and to pay at said rate. (3) It is agreed that Mullins is not a common carrier. (4) The contract is to remain in force and effect for one year unless revoked.

The testimony of the various public witnesses shows that they did not abide by the agreement to ship solely by Mullins. No complaint seems to have been made by Mullins on this account. Some of the witnesses had difficulty in remembering that they had any written contract with Mr. Mullins and none of the public witnesses seemed to regard such a contract in any other light than as a rate quotation or a protection to the defendant. The provision in the contract providing that the first party is not a common carrier is repeated twice and it seems to show thereby the intent of such contract; and at the same time the other overwhelming evidence pointed to its meaninglessness (See *Thornwill v. Gregory*, 31 C.R.C.843).

The defendant frankly testified that he was willing to make a contract with any person at a satisfactory rate. The defendant seemed to want to avoid the status of a common carrier without doubt, but his excuses as to why he did not haul for any and everybody were simply the usual stock excuses. The defendant was shown to maintain a regular schedule three times a week and the

witnesses were even certain that shipments arrived just as regularly as if on freight train schedules.

The defendant in his reply brief seems to rest his case solely upon the decision of People v. Duntley (85 Cal., Dec. 38). His brief does not say much about the testimony in the record except that he was not increasing his customers, that he did not solicit any longer and that he refused to haul for some merchant or merchants in each town between Redding and Sacramento, this refusal being subsequent to the time of the filing of this complaint. It seems to us that there is quite a distinction between the record in this case and that of the People v. Duntley. It is needless to cite at length the distinguishing features mentioned by complainants' counsel in their reply brief. The Commission has frequently distinguished the Duntley case from cases such as this one. One great point of difference is the defendant's own testimony in this case which shows that this defendant does not select the persons for whom he hauls or limit his patronage, except that his present equipment limits him in pursuing the solicitation which first brought him the 28 contracts he now has. The written contract excuse offered by defendant has been answered sufficiently by the recent case of Regulated Carriers v. Brownlee, Dec. 26368.

Allegations of the complaint herein being fully sustained by a preponderance of the evidence and the Commission being satisfied that the defendant has been operating as a common carrier, a cease and desist order should issue.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner

and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. CCP Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 CRC 224; re Ball and Hayes, 37 CRC 407; Wermuth v. Stamper, 36 CRC 458; Pioneer Express Company v. Keller, 33 CRC 571.

It should also be noted that under Section 8 of the Auto Truck Transportation Act (Statutes 1917, Chap. 213, as amended), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000.00, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

#### O R D E R

IT IS HEREBY FOUND THAT George Mullins, doing business under the fictitious name and style of Mullins Truck Line, is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status for compensation over the public highways of the State of California between fixed termini and/or over regular routes, to-wit: usually and ordinarily between Sacramento and Redding, California, serving also as intermediate points various cities, towns, communities, and other points en route, without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that George Mullins, doing business under the fictitious name and style of Mullins Truck Line, et al., shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon George Mullins, (Mullins Truck Line), that he cause certified copies thereof to be mailed to the District Attorneys of Sacramento, Placer, Sutter, Yuba, Butte, Tehama and Shasta Counties, to the Board of Public Utilities and Transportation of the City of Los Angeles and to the Department of Public Works, Division of Highways, at Sacramento.

The effective date of this order shall be twenty (20) days after the date of service upon defendant.

Dated at San Francisco, California, this 4<sup>th</sup> day of December, 1933.

C. E. Seaver

W. H. A. C.

M. B. Lanning

M. H. A. C.  
Commissioners.